

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DALE MCNEILL,	§	
	§	No. 147, 2011
Defendant Below-	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	ID Nos. 1001004788
	§	1001020304
Plaintiff Below-	§	
Appellee.	§	

Submitted: August 10, 2011  
Decided: September 27, 2011

Before **STEELE**, Chief Justice, **HOLLAND**, and **RIDGELY**, Justices.

***ORDER***

This 27<sup>th</sup> day of September 2011, it appears to the Court that:

(1) The Appellant, Dale McNeill, filed this appeal from a Superior Court sentence of McNeill as a habitual offender. McNeill contends that the Superior Court erred in sentencing him as a habitual offender because the State failed to prove beyond a reasonable doubt that McNeill was the person convicted of one of the predicate felonies. We find no merit to McNeill's appeal and affirm.

(2) In February 2010, McNeill was charged by indictment with four counts of felony forgery in the second degree, one count of felony theft, and one count of conspiracy in the second degree. The matter proceeded to a two-day jury trial. The jury found McNeill guilty on all counts.

(3) The State moved pursuant to title 11, section 4214(a) of the Delaware Code to declare McNeill a habitual offender for one of the felony forgery charges, the felony theft charge, and the conspiracy charge.<sup>1</sup> In support of its motion, the State presented certified court records as evidence of three prior felony convictions: an October 25, 1977 conviction in the United States District Court for the Eastern District of Pennsylvania relating to a bank robbery; an April 18, 1989 conviction in the Superior Court of New Jersey for drug possession and weapon possession (the “1989 Conviction”); and an August 27, 2004 conviction in the Superior Court of Delaware for robbery in the second degree (the “2004 Conviction”).

(4) The 1989 Conviction named a Charles De Shields as the defendant, but other evidence produced by the State indicated that McNeill had used the alias Charles W. DeShields. Specifically, in support of the 2004 Conviction, the State offered a certified criminal docket from the Superior Court for a “Dale K. McNeill” that listed “Charles W. DeShields” as one of McNeill’s aliases. In support of the 1989 Conviction, the State offered a certified copy of the indictment naming “Charles William De Shields” and a certified copy of the judgment naming “Charles De Shields.” That judgment relevantly stated: “[d]eft. has a prior criminal record which include[s] 2 bank robberies and a charge of kidnapping

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<sup>1</sup> See 11 *Del. C.* § 4214 (defining “habitual criminal”).

which was dismissed. . . . Deft. also misrepresented to the Pre-Trial Intervention Program his real name.” The judgment also provided a New Castle County, Delaware address for the defendant and stated that his date of birth was June 6, 1957, which was the same as McNeill’s date of birth.

(5) At the sentence hearing on March 18, 2011, McNeill contended that he was not the Charles DeShields associated with the 1989 Conviction. McNeill did not contest the other two predicate offenses. In response, the State pointed to the Superior Court docket listing “Charles W. DeShields” as one of McNeill’s aliases. The State also referred the Superior Court to its own presentence report, which listed the 1989 Conviction as well as two convictions for bank robbery and a dismissed charge of kidnapping. The Superior Court’s presentence report included the presentence report from the 1989 Conviction. That presentence report’s personal data section stated that “[a]lthough the Defendant is listed as Charles De Shields on this Indictment he admits to being Dale Kevin McNeill. He was born in Wilmington, Delaware on June 6, 1957[.]” At the hearing, McNeill did not present any evidence or speak on his behalf.

(6) The Superior Court determined that the State had established beyond a reasonable doubt that McNeill used the alias Charles DeShields and that McNeill was the defendant in the 1989 Conviction. The Superior Court sentenced McNeill

as a habitual offender to two years, eight months at Level 5 imprisonment followed by decreasing levels of supervision. This appeal followed.

(7) McNeill asserts that the Superior Court erred in sentencing him as a habitual offender. We review the Superior Court’s determination of habitual offender status to ensure it is supported “by substantial evidence in the record and [is] free from legal error and abuse of discretion.”<sup>2</sup> On a habitual offender motion, the State must prove beyond a reasonable doubt that each predicate offense satisfies the requirements of section 4214.<sup>3</sup> In meeting this burden, the State “need offer only unambiguous documentary evidence of a prior predicate conviction, not live witnesses, and not a particular or exclusive type of documentary evidence.”<sup>4</sup>

(8) McNeill contends that the State did not offer sufficient evidence connecting McNeill to the 1989 Conviction and thus did not establish one of the predicate offenses necessary for a habitual offender determination. Specifically, McNeill argues that the presentence report, which listed the 1989 Conviction in McNeill’s criminal history, was an insufficient record of the predicate offense. We found no merit to this argument. In *Oney v. State*, this Court held that “[p]resentence reports are properly admissible in habitual criminal proceedings to

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<sup>2</sup> *Morales v. State*, 696 A.2d 390, 394 (Del. 1997).

<sup>3</sup> *Hall v. State*, 788 A.2d 118, 127 (Del. 2001).

<sup>4</sup> *Id.* at 128 (internal citations omitted).

show a defendant's prior criminal record.”<sup>5</sup> This Court has also indicated that the Superior Court may rely on the presentence report to help resolve ambiguities in the record as to the defendant's exact criminal offenses.<sup>6</sup>

(9) In *Folks v. State*, we found an ambiguity in identity such that the State failed to meet its burden where the only evidence produced as to the first predicate offense was a docket indicating that a person with a similar name had been convicted of a felony.<sup>7</sup> We held that the Superior Court erred in its habitual offender determination because “the record [was] devoid of any information linking the name to [the defendant], other than a similarity in name.”<sup>8</sup> *Folks* is distinguishable on its facts.

(10) Here, the court records from the 1989 Conviction provided a birth date and criminal history that linked the defendant to McNeill. The 1989 Conviction also noted that the defendant had used an alias and had an address in New Castle County, Delaware. The presentence report listed a conviction for drug and firearm possession in the Superior Court of New Jersey that matched the 1989

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<sup>5</sup> 446 A.2d 389, 395 (Del. 1982); *Saunders v. State*, 401 A.2d 629, 634–35 (Del. 1979).

<sup>6</sup> See *Walker v. State*, 790 A.2d 1214, 1222 (Del. 2002) (affirming habitual offender determination and noting that “[w]here the certified court transcript did not clearly reflect the exact criminal offense, the Superior Court referred to the defendant's criminal history record contained in the presentence report”); *State v. Cobb*, 592 A.2d 983, 984 (Del. Super. 1990) (finding sufficient evidence to support habitual offender motion where presentence report contained name, race, date of birth, and social security of defendant in past crimes that matched those of present defendant).

<sup>7</sup> 872 A.2d 959, 2005 WL 974782, at \*3 (Del. Apr. 25, 2005) (Table).

<sup>8</sup> *Id.*

Conviction presented by the State. The report also contained the New Jersey presentence report from the 1989 Conviction that, as McNeill concedes, parallels McNeill's pedigree and biographical information. The New Jersey presentence report's personal data section stated that the defendant admitted to being a "Dale Kevin McNeill" born in Wilmington, Delaware on June 6, 1957. Finally, the Superior Court docket lists the alias of Charles W. DeShields. Accordingly, there was substantial evidence in the record to support the Superior Court's habitual offender determination.

(11) McNeill also contends that the State should have obtained arrest cards and fingerprints from the 1989 Conviction and offered expert testimony linking those fingerprints to McNeill's. In *Walker v. State*, we found a habitual offender determination supported by substantial evidence where the State produced, along with other evidence, prior arrest cards and expert testimony linking those arrest cards to the defendant's fingerprints.<sup>9</sup> But, we have not required that the State offer expert testimony linking the defendant to a predicate offense where the record contains other substantial evidence. Such a requirement would conflict with *Hall's* holding that neither live testimony nor a particular type of evidence is necessary to support a habitual offender motion. While fingerprint analysis may have been helpful given the use of an alias, the other identifying information in the

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<sup>9</sup> 790 A.2d 1214, 1221–22 (Del. 2002).

record provided a proper basis for making the habitual offender determination.

(12) The documentary evidence relied on by the Superior Court was sufficient to establish that McNeill was the person convicted of the three predicate felonies. Accordingly, the Superior Court did not err in sentencing McNeill as a habitual offender.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Henry duPont Ridgely  
Justice